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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/771,135

01/27/2001

Stephen D. Messer

056257-5002

6726

9629 7590 03/04/2009
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EXAMINER

LE, KHANH H

ART UNIT

PAPER NUMBER

3688

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/771,135	Applicant(s) MESSER ET AL.	
	Examiner KHANH H. LE	Art Unit 3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/26/2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51-66 is/are rejected.
- 7) ☒ Claim(s) 51-60 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/14/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/26/2008 has been entered.

Claims 51-56 were pending. Claims 57-66 are added. Thus claims 51-66 are pending. Claim 51 are amended. Claim 51, 61, 64 are independent.

Claims objections

2. **Claim 51: in this system claim**, 1st and 2nd affiliate servers should be claimed as was done for the clearinghouse server and the merchant server, because one of the definitions of website is a collection of webpages i.e. data only, there are no structures as required in a system claim. Appropriate correction is required.

Claims 52-60 are objected to as being dependent upon rejected base claim 51.

Claim Rejections - 35 USC § 112 (first paragraph)

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 56, 58 and 60 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.**

Claim 56: recommending after the transaction cannot be found in the instant specification nor is it clear to be disclosed from the patents or applications incorporated by reference.

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Claim 58 depends on claim 57, and recites “wherein said HTTP command to said clearinghouse server corresponding to said user's use of said primary referral link is embedded in said first sub-link”.

Clear support for http command imbedded in sublinks seems to be lacking.

Claim 57 has support in specification Fig. 5 “link 53ab” and paragraph [0039] but there is no http disclosed throughout the specification and no http disclosed as embedded in sublinks. [0014] talks about embedding source identifiers in navigational links but does not disclose http or http in sublinks. Fig 6 and [0040] (re. embedding) is not disclosed as tied to Fig 5 or paragraph [0039]. It is acknowledged the specification incorporates by reference some patents however it is not found that any of those, as tied to the present disclosure, inherently discloses the claimed limitations.

Claim 60 depends on claim 59, and recites” wherein said HTTP command to said clearinghouse server corresponding to said user's use of said secondary referral link is embedded in said third sub-link”.

Clear support for http command imbedded in sublinks seems to be lacking.

no http / no http in sublink Claim 59 has support in specification Fig. 5 “link 55ab” and paragraph [0039] but there is no http disclosed through out the specification and no http disclosed as embedded in sublinks. [0014] talks about embedding source identifiers in navigational links but no http and no http in sublinks. Fig 6 and [0040] (re. embedding) is not disclosed as tied to Fig 5 or paragraph [0039]. It is acknowledged the specification incorporates by reference some patents however it is not found that any of those, as tied to the present disclosure, inherently discloses the claimed limitations.

Claim Rejections - 35 USC § 112 (second paragraph)

5a. The following is a quotation of the second paragraph of 35 U.S.C. 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5b. Previous rejection of claims 51-56 under 35 USC § 112 (second paragraph) are withdrawn in view of the amendment.

5c. Claim 56 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Because of the lack of support (see above), it is not clear why the clearinghouse server would recommend the first affiliate website or said second affiliate to said user upon completion

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of the electronic transaction since the user came from 1st and 2nd websites. Thus the scope of the claim is unclear.

Response to Arguments as to Prior Art

6. Applicant's arguments have been fully considered but they are mostly no longer applicable since new grounds of rejection are presented below.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 51-60, 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crouthamel US 7249056 in view of Landau et al., US 6804660 B2, herein Landau.

Claims 51, 61, and 64:

Crouthamel discloses method and system for exchanging data between affiliated sites via a central hub. Fig 4 shows many affiliates and merchants. Fig 4 shows processing, tracking of referrals via central hub 18 (Herein "CH"). FIG. 6 shows affiliate directing to CH and CH redirecting to merchant.

Each merchant 1 is linked to many partners which all go through the CH. So if Partner 1 refers to merchant M1, it has to go thru CH. So on for merchant 1 (or partner2) to merchant 2.

Relevant excerpts of Crouthamel :

A system and method is provided for exchanging data between at least one merchant site and at least one partner site across an interconnected computer

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network. The at least one merchant site enables a user to conduct a transaction on the merchant site, and employs a merchant database format. The at least one partner site has a link to the at least one merchant site and/or a display of transactional information from the at least one merchant site, and employs a partner database format different than the merchant database format. The display of transactional information of the at least one partner site enables a user to conduct a transaction with the at least one merchant site on the at least one partner site. A clearinghouse site is also provided in communication with the at least one merchant site and the at least one partner site. The clearinghouse site has at least one translator to convert data compliant with the merchant database format into data compliant with the partner database format, and is also capable of sending such converted data to the at least one partner site. In addition, the clearinghouse site may have at least one further translator to convert data complaint with the partner database format into data compliant with the merchant database format, and may also be capable of sending such converted data to the at least one merchant site.

Description Paragraph - DETX (80):

When the clearinghouse site 18 receives the sets of transaction data from the partner sites, as shown at 104A and 104B, the clearinghouse site 18 processes the received sets of transaction data and updates the internal tables on the storage device 22. The internal tables, as previously mentioned, may include product information data, transaction data, referral data and/or tracking data. Using these tables, the clearinghouse site 18 may allocate a credit/commission to each partner site based on the actual amount of transaction.

Brief Summary Text - BSTX (5):

Therefore, it is not surprising that many businesses use the Internet, especially a subset of the Internet known as the World Wide Web (the "Web"), as a significant sales channel and commerce forum. Web servers typically employ the HyperText Transfer Protocol ("HTTP") to enable users to communicate over a number of hyperlinks that interconnect numerous web sites to each other. The web sites are usually created using the HyperText Markup Language ("HTML"), which is a set of "markup" symbols or codes inserted in a file intended for displaying on a web browser. The markup symbols typically direct the Web browser how to display a web page's words and images for the user. For more information on HTTP and HTML, see Internet Engineering Task Force ("IETF") Request For Comments ("RFC") 1945 and RFC 2616, and RFCs 1866 and 2854, respectively, all of which are specifically incorporated in their entirety

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herein by reference.

Description Paragraph - DETX (12):

*Referring to the drawings, FIG. 1 is a block diagram illustrating a system 10 arranged to employ exemplary embodiments of the present invention. As shown in FIG. 1, the system includes three partner sites 12, 14 and 16 (also referred to as "affiliate sites"), three merchant sites 24, 26 and 28, and a clearinghouse site 18, all of which are interconnected across one or more computer networks 11, such as Wide Area Networks ("WANs"), the World Wide Web ("WWW"), and/or the Internet. However, the computer networks could also take other forms, such as any communication network. **Additionally, for simplicity, only three partner sites, three merchant sites and one clearinghouse site are illustrated in FIG. 1. However, people skilled in the art will appreciate that more or fewer partner sites and merchant sites could also be used, and, further, that more than one clearinghouse site could also be used. Additionally, other arrangements and other elements, whether or not separately known in the prior art, are contemplated and could also be used.***

Description Paragraph - DETX (56):

*As the consumer is linked to the clearinghouse site 18, the clearinghouse site 18 appends the consumer's query and possibly inserts a cookie on a consumer's system. The cookie allows the clearinghouse site 18 to track the consumer's actions, such as placing a purchase on a merchant site, and to also track the affiliation between each partner site and the merchant site. When the consumer orders data on the merchant sites 22 and/or 24, the order data is sent from the merchant sites 22 and 24 to the clearinghouse site 18, as shown at 64A and 64B in FIG. 4. **Then, the clearinghouse site 18 may store the order data on the storage unit 22. The clearinghouse site 18 may also track transactions between the partner sites and the merchant sites, or track how many consumers have clicked-through to the merchant sites from each partner site. Additionally, the clearinghouse site 18 may determine commission payments for each partner site based on the number of click-throughs to affiliated merchant sites and/or the click-throughs that resulted in product purchases on the merchant sites.***

Crouthamel does not explicitly disclose successive referrals but it expansively discloses that each merchant has many partners thus it would be obvious that successive referrals can be done all going through the central hub. It is noted that central accounting via the central hub is well-known for accounting convenience for the affiliates (see e.g. Pettersen US 6826594 cited below). Thus it would have been obvious to one having ordinary skill in the art at the time of the invention (herein a "PHOSITA") to adopt this referral model taught by Crouthamel in successive referrals for the above known accounting convenience.

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CROUTHAMEL does not specifically disclose “said HTTP commands data including an affiliate field comprising one or more subvariables indicating referral activity”.

However, as discussed earlier during prosecution, LANDAU discloses a network of affiliates providing a first link on an affiliate site (e.g. fred.com) to reach a first e-site (CD Merchant.com) , then the first e-site providing a second link to reach a second e-site (e.g. MusicMemorabilia.com) (see at least Fig. 7 and associated text ; col. 15 lines 66 to col. 20 line 2: for example, referring to the discussion in cols. 17-18).

Landau discloses “HTTP commands data including an affiliate field comprising one or more subvariables indicating referral activity” (e.g. LANDAU discloses embedding primary (fred) and secondary source identifiers (CD Merchant) associated with any primary and secondary referral links used by the user to reach a first e-site in a navigational link used to reach the 2nd e-site , col. 18 lines 9-10; also see col. 17 lines 20 , 30).

Thus it would have been obvious to a person having ordinary skill in the art at the time the invention was made (herein a “PHOSITA”) to add the Http commands including an affiliate field comprising one or more subvariables indicating referral activity, as taught by Landau to CROUTHAMEL to allow tracking of referrals. In the referral model of CROUTHAMEL, the central hub identifier would have been used as destination or source of the referral as appropriate.

Claims 57-60 : Crouthamel in view of Landau teach claim 51 but do not specifically teach all the claimed details limitations. However as discussed above both Crouthamel and Landau disclose method for generating website links using http commands (see at least citations above). Thus it would have been obvious to a PHOSITA to modify adapt those links and http commands teachings to the referral via central hub for successive referrals of Crouthamel in view of Landau, to obtain primary referral link comprises a first sub-link from said first affiliate server to said clearinghouse server and a second sub-link from said clearinghouse server to said second affiliate server wherein said HTTP command to said clearinghouse server corresponding to said user's use of said primary referral link is embedded in said first sub-link; wherein said secondary referral link comprises a third sub-link from said second affiliate server to said clearinghouse server and a fourth sub-link from said clearinghouse server to said merchant server. wherein said HTTP command to said clearinghouse server corresponding to said user's use of said secondary referral link is embedded in said third sub-link. These modifications would have been obvious to effect the referral and compensation scheme as taught by Crouthamel for successive referrals.

Claims 52-53, 62-63, 65-66:

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CROUTHAMEL and Landau disclose a system as in claims 51, 61 and 64 above, and compensation of affiliates but does not disclose wherein compensation is assigned to the first affiliate website and the second affiliate website in equal shares.

or

wherein compensation assigned to the first affiliate website comprises a majority portion of a commission associated with said user's completion of the electronic transaction, and compensation assigned to the second affiliate website comprises a minority portion of a commission associated with said user's completion of the electronic transaction.

Official Notice is taken that it is well-known before invention time that compensation schemes are to be agreed between the parties as desired. They may be dictated by market forces. They may be dictated by pure greed, self-dealing and can be completely arbitrary and capricious, without (at least apparent) basis on performance. See e.g. "Fixing Executive Compensation Excesses: The board members who decide a CEO's pay have a fundamental conflict of interest, and shareholders need to have more of a say", by Edward E. Lawler III , BusinessWeek, Viewpoint February 5,2009,

http://www.businessweek.com/print/managing/content/feb2009/ca2009025_072667.htm, downloaded 02/16/2009.

***Note:** "For the last 10 years more than 25% of board members have said it is generally too high, and 50% agree that it is too rich in some high-profile cases."*

Thus the practice predates the instant invention. On the other hand, they may based on altruistic motives. See e.g. **Excerpt of Hoyt**, U.S. Provisional Application No. 60/178,260, filed January 25, 2000, on Public Pair (6 pages attached), page 1 of 6, 2nd to last para., disclosing referrals without commissions.

Because it is obvious to follow customary practices, thus in the system of CROUTHAMEL and Landau, setting compensation of the parties, as desired and agreed by the parties, with or without basis in performance or reason, (as shown in e.g. Lawler III and Hoyt), in any proportions, including in the proportions as claimed, would have been obvious to a PHOSITA. (It is noted the instant specification does not give any reason for the particular compensation split, see e.g. [0013] of the PgPub version, thus the particular compensation split could just have been arbitrary and is not critical to the invention).

Claims 54-55:

CROUTHAMEL and Landau disclose a system as in claim 51 above and further discloses a database communicatively coupled to the clearinghouse server, the database operable to store data (see discussion of claim 51 above) .

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The “data associated with the first affiliate website and the second affiliate website” and “data associated with compensation assigned to the first affiliate website and the second affiliate website” are non-functional descriptive material to which no patentable weight is given because the type of data does not impact the structure of the clearinghouse server. See MPEP 2106.

Since a database can store any type of data, it would have been obvious “data associated with the first affiliate website and the second affiliate website” and “data associated with compensation assigned to the first affiliate website and the second affiliate website” could be stored if desired.

Claim 56:

CROUTHAMEL and Landau disclose a system as in claim 51 above but does not disclose said clearinghouse server recommending said first affiliate website or said second affiliate to said user upon completion of the electronic transaction. However, a message of recommendation is non-functional descriptive material to which no patentable weight is given because the type of data does not impact the structure of the clearinghouse server. See MPEP 2106.

Further it is only claimed that the server be “operable to recommend”. Since the CROUTHAMEL server is in contact with the user, it is operable to send any message, e.g. by email, including a recommendation email of the 1st and second affiliate.

Further, if there are market forces or incentives dictating recommending the 1st and second affiliate to the user, it would have been obvious to a PHOSITA to add such message to the server system of CROUTHAMEL to carry out the intended marketing goal. The implementation would have been predictable thus obvious.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Crouthamel US 7249056 discloses method and system for exchanging data between affiliated sites.

Pettersen US 6826594 discloses method and system for remote content management of a designated portion of a web page. Brief Summary Text - BSTX (10): A central linking web site system is described above as advantageous in that it greatly simplifies and centralizes accounting for both merchants and affiliates.

Gerace 7032168 discloses method for generating website links (Fig 3) .

Carrott US 6,334,111 (issued 12-2001) discloses allocating revenue using tags.

Eggleston et al. US-6,061,660 A discloses incentive programs.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Tuesday, Wednesday, and Friday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, James W. Myhre can be reached on 571-272-6722. The fax phone numbers for the organization where this application or proceeding is assigned are **571-273-8300** for regular communications and for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600. For patent related correspondence, hand carry deliveries must be made to the Customer Service Window (now located at the Randolph Building, 401 Dulany Street, Alexandria, VA 22314)..

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 2, 2009
/Khanh H. Le/
Examiner, Art Unit 3688